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ABSTRACT

An assessment was conducted to determine how well the Alaskan court system and other agencies in the child welfare system meet the needs of abused and neglected children, their families, and society's interests in these cases. Data were collected through analysis of 473 case files in four courts; interviews with 60 attorneys, judges, guardians ad litem, tribal representatives, and others in four communities; observations of hearings in three courts; analyses of laws, court rules, cases, and regulations governing Child in Need of Aid (CINA) cases; and input from the public, the Advisory Committee, and special interest organizations. Ten major findings included: (1) there were significant variations in case processing among locations; (2) judges believed that they lacked authority to oversee Division of Youth Services (DFYS) decisions for the most part; (3) court involvement in Child in Need of Aid (CINA) cases was characterized by multiple, short hearings; (4) numerous parties participating; (5) most cases closed within 18 months; (6) CINA cases involving Native children adjudicated at twice the rate of cases with non-Native children; (7) complaints about delays were common to each location studied ; (8) limited court facilities existed; (9) implementation of requirements of the Indian Child Welfare Act (ICWA) varied; and (10) other agencies' decisions, practices, and resources affect court actions. General and specific recommendations are made regarding the judge's role, delay reduction, consistency among courts, relationships among parties, judicial training and education, court facilities, working with other agencies, statutory and rules revisions, and the ICWA. (KB)

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Improving the Court Process for Alaska's Children in Need of Aid

October 1996

Executive Summary

PS 025858

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Improving the Court Process for Alaska's Children in Need of Aid

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acknowledgments

The Alaska Judicial Council has been privileged to conduct the first major assessment of the Alaska Court System's role in permanency planning for children in need of aid. The Alaska Supreme Court asked the Judicial Council to independently evaluate the court's work. During the year that this has taken, the court has supported and cooperated with Council staff in every way. We particularly thank the judges and court staff in Anchorage, Bethel, Fairbanks, and Sitka, where we spent many hours reviewing case files, observing hearings, interviewing staff, and asking questions. Court administrative staff, especially Deputy Administrative Director Stephanie Cole and Special Projects Manager Susan Miller, helped set up the project, review the data, and develop the implementation plan.

Outside the courts, many attorneys, social workers, Division of Family and Youth Services staff, guardians ad litem, foster parents, birth parents, foster children, service providers, and interested citizens took the time to talk about their experience with and understanding of the court's role for children in need of aid. We thank each of them who have so enriched our knowledge.

Finally, we thank Susan McKelvie, our Research Associate. Susan collected all of the case file data, did much of the computer work, and attended to the details.

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Executive Summary

On September 19, 1996, the *Anchorage Daily News* front page reported "an alarming increase in the incidence of child abuse and neglect in this country."[1] The number of these cases had doubled from an estimated 1.4 million cases in 1986 to an estimated 2.3 million in 1993.[2]

Alaska has by no means escaped this crisis. The Alaska Division of Family and Youth Services reported a 67% increase in reports of harm to children from 1989 to 1993. Coupled with budget tightening in recent years, the prospects for Alaska's abused and neglected children are disturbing at best.[3]

The report described in this executive summary, part of a nationwide effort, examines how well the Alaska Court System, and to a lesser extent other agencies in the child welfare system, meet the needs of abused and neglected children, their troubled families, and society's interests in these cases. While the courts and other agencies are in many ways handling their cases well, especially given the resources available, major areas need improvements and, in some cases, significant changes.

This executive summary presents a few of the most important findings, conclusions and recommendations contained in the Judicial Council's full report

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[1] Barbara Vobejda, *Child Abuse Doubles*, ANCHORAGE DAILY NEWS, p. A1, September 19, 1996.

[2] *Id.*

[3] From FY92 to FY93, the Division's expenditures increased less than 1%, but the number of clients it served increased 4%. DIVISION OF FAMILY AND YOUTH SERVICES, FISCAL YEAR 1993 ANNUAL REPORT 2 (1994).

assessing the Alaska Court System's handling of child abuse and neglect (child in need of aid) cases. This executive summary begins with a description of the project, including its design, funding and methodology, and how it fit into the national context. Part II summarizes the top ten major findings from the assessment. The remainder of the executive summary summarizes the assessment's recommendations.

I. Background of Project

A. National Context

The court's role in child welfare cases has evolved and become more complex over the last two decades. In the 1970's, the juvenile court was expected only to determine whether a child had been maltreated, and the focus was on the need to rescue the child from abusive or neglectful parents.[4] In 1980, Congress responded to problems in the child welfare system by changing its policy. Now the courts are expected to help reform troubled families while at the same time protecting the children. When family preservation fails, the court is expected to make sure that each maltreated child receives a safe, permanent, and stable home.[5] Under the current law, judges have more responsibilities and constitute an integral part of the operation of the foster care system.[6]

In 1993, Congress decided to assess and improve implementation of the 1980 law.[7] It approved grants to state court systems, including Alaska, to assess and improve their handling of abuse, neglect, foster care and adoption litigation. The Alaska Court System contracted with the Alaska Judicial Council[8] to carry out the

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[4] HARDIN, ONE COURT THAT WORKS 1 (ABA Center on Children and the Law 1993).

[5] WATAHARA & LOBDELL, THE CHILDREN NOBODY KNOWS: CALIFORNIA'S FOSTER CARE-DEPENDENCY SYSTEM 7 (1990).

[6] L. Edwards, *Improving Implementation of the Federal Adoption Assistance and Child Welfare Act of 1980*, JUVENILE AND FAMILY COURT JOURNAL 3.

[7] Hardin, M., IMPROVING STATE COURTS' PERFORMANCE IN CHILD PROTECTION CASES: USER'S MANUAL FOR CONDUCTING YOUR COURT ASSESSMENT 1 (ABA Center on Children and the Law, 1995). *See* Public Law 103-66, §§ 13711(d)(2) and 13712.

[8] The Judicial Council is a constitutionally created state agency charged with, among other things, conducting studies to improve the administration of justice in Alaska. The Council is composed of three attorney members appointed by the Alaska Bar Association, three non-attorney members appointed by the governor with consent of the legislature meting in joint session, and the chief justice of the supreme court (who serves *ex officio*).

assessment phase of the DHSS Court Improvement Program. This executive summary, and the full report, are two products of that assessment.[9]

B. The Assessment

In keeping with the aims of the federal legislation, Alaska's assessment examined many aspects of child in need of aid litigation, including completeness and depth of hearings (emphasizing effective compliance with state and federal mandates), sufficient and timely notice to parties, representation of parties, efficient and timely decision-making, adequacy of funding, and quality of treatment of parties. The assessment also examined the selection and training of judicial officers, judicial time to prepare for and conduct hearings, role and training of court staff, case flow management to avoid delays, selection and training of attorneys and guardians ad litem, and the use of technology in order to fully plan for improved court roles in foster care. A third area of inquiry was evaluation of the court's compliance with federal standards for foster care hearings.[10]

1. Participants, Advisory Committee, and Roles. The Judicial Council, the Court system, five state agencies, Alaska Native organizations, and private citizens examined foster care issues in Alaska during 1995 and 1996. State and local government agencies (including Division of Family and Youth Services and the Department of Law) provided data, and advised the Council and court system. The Judicial Council provided staff and guidance, the court assisted with access to data and some administrative needs, and other agencies encouraged staff to cooperate and participate in the evaluation.

Advisory Committee members included Judge Larry Zervos (Superior Court, Sitka), Children's Court Master William Hitchcock (Anchorage), Susan Miller (Special Projects, Alaska Courts), Division of Family and Youth Services staff Diane Worley (Juneau) and Mark Preston (Bethel), Kimberly Martus (UAA Justice Center, Anchorage), Vicki Otte (Native Justice Center, Anchorage), Kathy Craft (Family Centered Youth Services, Fairbanks), Barbara Malchick (Office of Public Advocacy, Anchorage), Linda Beecher (Public Defender Agency, Anchorage), Susan Parkes

[9] As a preliminary part of this assessment, the Council created a number of smaller, more detailed reports on various aspects of child welfare cases. Contact the Alaska Judicial Council, 1029 W. Third Ave., Ste. 201, Anchorage, AK 99501, for copies of those reports.

[10] The one-year grant had about $79,000 in funding for staff, data collection and analysis, review of legal standards and issues, and preparation of a plan for improvements to take place in the next several years.

(Department of Law, Anchorage), William Walters (Tanana Chiefs Conference, Fairbanks), Candace Wheeler (Citizens Foster Care Review Board, Anchorage), Pat Kennedy (Anchorage), Verneta Wallace (Anchorage), Kerry Reband (Anchorage), and Angela Olson (Anchorage).

2. Methods. The Council relied on two national sources to help design much of the assessment. The American Bar Association's Center for Children and the Law[11] helped design interview and data collection forms, and suggested methodologies and structure for the assessment. The federal Department of Health and Human Services also gave guidance and support throughout the project.

The assessment used data from five major sources: (1) a detailed study of case files in four courts; (2) interviews with attorneys, judges, guardians ad litem, tribal representatives, and others in each of the four communities and interviews with other persons (3) observations of actual hearings in three courts;[12] (4) analysis of the laws, court rules, cases, and regulations governing Child in Need of Aid (CINA) cases; and (5) input from the public, the Advisory Committee for the project, and from special interest organizations.

The Council reviewed 473 closed and open cases from four court locations.[13] The court case files contained information about the length of time the case took, how many children were involved, the nature of the parental problem that brought the case to the CINA system, the number of hearings in the case (who was present, who spoke and the outcome of the hearing), the judicial orders in the case, and the final outcome of the case.

Staff spoke to about 60 people in structured interviews. The interviews gave information about the relationships among parties in the case, descriptions of the CINA process and roles of the different participants, discussions of reasons for delays and possible solutions, and suggestions for changes to the system. Input from the

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[11] The Center contracted with the federal Department of Health and Social Services to help all states that received funds to assess or improve court's efforts in permanency planning.

[12] Anchorage, Bethel, and Fairbanks. Staff worked in Sitka during a week in which the court had not set any CINA hearings.

[13] Anchorage, Bethel, Fairbanks, and Sitka. Anchorage (about 260,000 population) and Fairbanks (about 70,000 in the area) were considered urban courts. Sitka, in Southeast Alaska, had the fourth largest population (about 8,500) of any city in the state but one of the lower caseloads. Bethel served its own population of about 4,000, and fifty-six villages spread throughout western Alaska along the Yukon and Kuskokwim rivers and the Bering Sea coast.

public, Advisory Committee, and others addressed the issues raised in specific cases, overall policy considerations for foster care, and much information about aspects of the CINA and foster care system beyond the scope of this report.[14] Analysis of the information collected from all of these sources formed the basis for the report's findings.[15]

II. Court System's Role in Child Abuse and Neglect Cases: Major Findings

Child in need of aid cases, which are closed to the public to protect families' privacy, are among the most important and difficult cases the court handles. Aside from the practical difficulty of deciding what is best for someone else's children, these cases present a very real potential for conflict among the rights of children, parents, tribes and institutional players such as the court system, the Department of Law, the Public Defender and the Department of Health and Social Services.[16] For example, a troubled parent has the right to be given time sufficient to work through a case plan; yet children need certainty and prompt decisions. The parties look to judges to hold people accountable, yet many judges feel they lack the expertise or the authority to actively manage cases.

Each court had strengths in the way it handled children's cases. Anchorage was well-organized, with careful attention to order in files, responsiveness to parties, and efficiency in case management. Fairbanks judges had a strong commitment to individual handling of each case, and set children's cases as one of their highest priorities. The Fairbanks court had a long history of working closely with the Attorney General's office. In Bethel, the court and DFYS cooperated closely in recent years to improve case handling and coordination with tribal services, and to reduce backlogs. Sitka had a long history of coordination among the court, DFYS, and tribal workers in children's cases. Although fewer attorneys participated in Sitka cases, the court encouraged other parties to speak in court and take active roles.

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[14] The Council tried to pass this information on to the appropriate agencies and parties. When individuals gave us information about their own cases or ones they were familiar with, we included their data in the overall look at the way the system worked.

[15] Questions about data not discussed in the report should be addressed to the Alaska Judicial Council, 1029 W. Third Ave., Ste. 201, Anchorage, AK 99501.

[16] Within the Department of Health and Social Services, the Division of Family and Youth Services (DFYS) handles child abuse and neglect matters in Alaska.

The report also found areas in which the court system could improve its handling of CINA cases. All the courts surveyed could decrease delay in permanence for children, although the Sitka court was the timeliest on some measures. The assessment found numerous inconsistencies in courts' handling of children in need of aid cases statewide. While different courts certainly need not have identical procedures, courts should increase the consistency with which they handle these cases statewide. The report made additional findings about cases that involved the Indian Child Welfare Act, and about other agencies that participate in CINA cases.

A. Caseloads

The Division of Family and Youth Services (DFYS) can take emergency custody of a child under a variety of circumstances, including abandonment, neglect that threatens a child's life or health, and physical or sexual abuse. Shortly after it removes a child from the home, the Division must file a child in need of aid petition with the court.

In fiscal year 1995, 1,049 CINA cases were filed in Alaska's courts (about half in Anchorage). During that same year, the court disposed of 641 CINA cases. The FY95 figures represent an increase over the previous year, when 713 child in need of aid cases were filed (over half in Anchorage) and 607 were disposed of.[17]

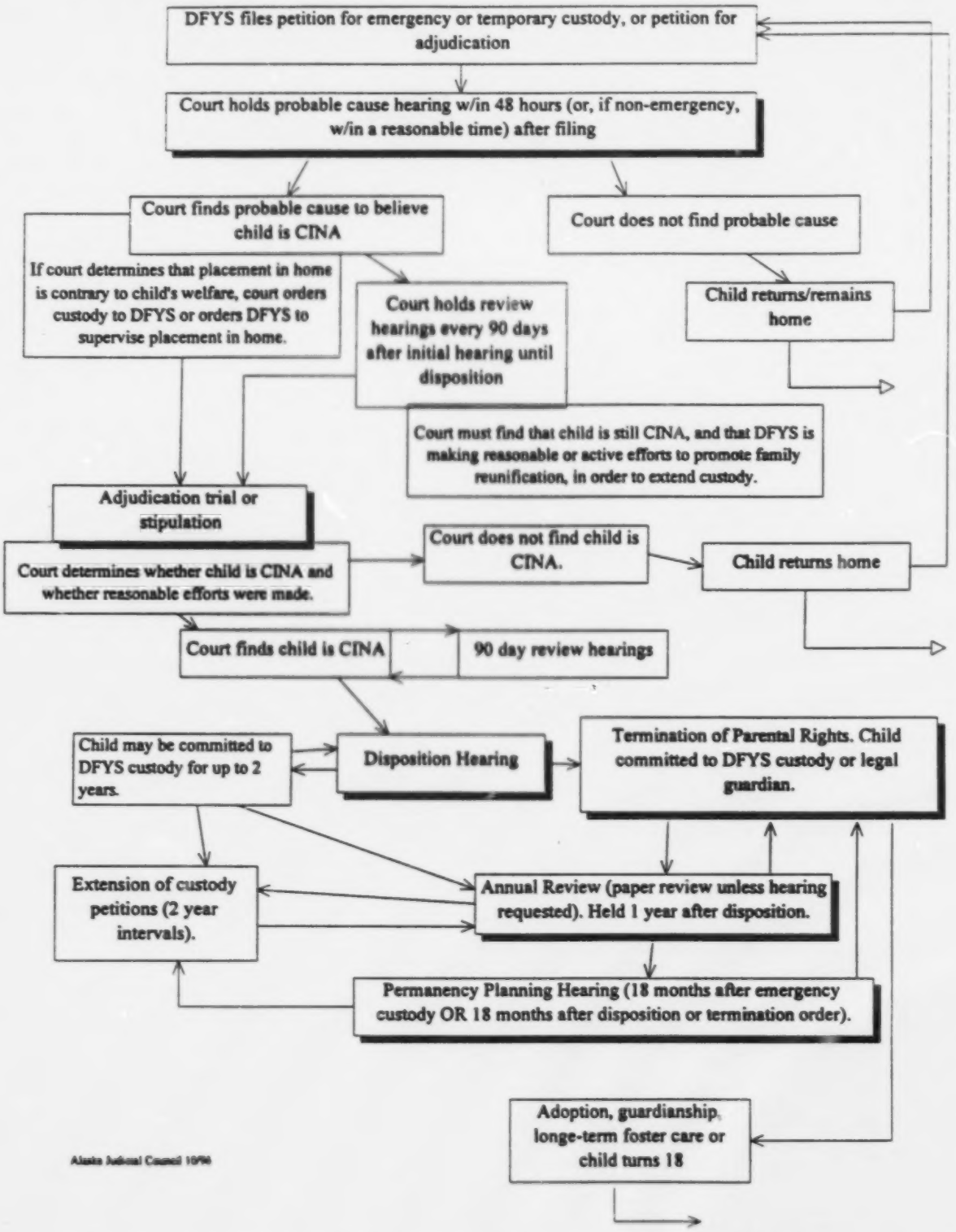
B. Overview of Alaska Child in Need of Aid Cases

The flow chart (Figure 1) outlines the process that most Anchorage CINA cases, and with certain variations, most other CINA cases, followed.

1. Temporary custody hearing: Within twelve hours after taking custody of a child, DFYS must file a petition with the court asking authority to continue custody for a specific period of time. The court must schedule a hearing within 48 hours after the petition is filed.

[17] Data compiled by the Alaska Court System's Office of Technical Operations (on file with the Judicial Council).

Alaska Legal Framework for Child in Need of Aid Cases


DFYS files petition for emergency or temporary custody, or petition for adjudication
Court holds probable cause hearing w/in 48 hours (or, if non-emergency, w/in a reasonable time) after filing
Court finds probable cause to believe child is CINA
Court does not find probable cause
If court determines that placement in home is contrary to child's welfare, court orders custody to DFYS or orders DFYS to supervise placement in home.
Court holds review hearings every 90 days after initial hearing until disposition
Child returns/remains home
Court must find that child is still CINA, and that DFYS is making reasonable or active efforts to promote family reunification, in order to extend custody.
Adjudication trial or stipulation
Court determines whether child is CINA and whether reasonable efforts were made.
Court does not find child is CINA.
Child returns home
Court finds child is CINA
90 day review hearings
Child may be committed to DFYS custody for up to 2 years.
Disposition Hearing
Termination of Parental Rights. Child committed to DFYS custody or legal guardian.
Extension of custody petitions (2 year intervals).
Annual Review (paper review unless hearing requested). Held 1 year after disposition.
Permanency Planning Hearing (18 months after emergency custody OR 18 months after disposition or termination order).
Adoption, guardianship, longe-term foster care or child turns 18
Alaska Judicial Council 10/96

The assessment found that most temporary custody hearings statewide were short (lasting between five and fifteen minutes), uncontested proceedings. The social worker, the assistant attorney general and sometimes the parents and their attorneys appeared at these hearings. The judge usually appointed a guardian ad litem to represent the child's interests (except in Anchorage, where the GAL was appointed before this hearing), and appointed attorneys for the parents. In all locations judges typically found probable cause to believe that the child was a child in need of aid. In some cases, judges also made specific findings that DFYS had made reasonable efforts under the circumstances to keep the child in the home; however, the frequency with which judges made reasonable efforts findings varied by community.

2. Review Hearings: Court rules require review of a CINA case at least every ninety days during the period before the court formally adjudicates the child as a child in need of aid. In most Anchorage and Fairbanks cases, and a majority of Sitka cases, the ninety-day review hearings were the only hearings that actually occurred other than the initial temporary custody hearing. These hearings also were, on the average, very short. Generally, parties did not use these hearings for case planning, but treated them more like status hearings at which the state, usually through the assistant attorney general, recited the status of the case. Many cases contained more than one ninety-day review hearing.

3. Adjudication: The adjudication is a trial at which the judge decides whether DFYS has shown by a preponderance of the evidence that the child is a child in need of aid. The assessment found that less than half of all CINA cases statewide ever reached this stage, even those that were open for many months. Anchorage adjudicated 37% of its cases, Fairbanks adjudicated 36% and Sitka adjudicated 43%. Bethel, on the other hand, adjudicated 77% of its CINA cases (almost all of which involved Indian children). Interviewees said that when adjudications occurred, parties often stipulated or agreed to this finding before the hearing took place, resulting in a fairly brief court appearance.

4. Disposition: After the court finds a child to be in need of aid, court rules require a disposition order setting out placement, and a plan for the family and the state to provide a safe environment for the child. Alternatively, the state can ask the court to terminate parental rights, or the parents could voluntarily relinquish rights. The disposition often is agreed upon at the same hearing at which the adjudication occurs.

5. Post-Disposition Reviews: Statutes and court rules potentially require two different types of court reviews after disposition: annual reviews and the permanency planning review. Depending on the nature of the review and the parties' requests, the court could (and did) conduct some of these reviews without a hearing.

C. Ten Major Findings from the Assessment

The assessment studied and made findings about a great many variables in CINA cases. In the interest of brevity, this section focuses on some of the findings that have the largest implications for the court.

1. Significant Variations Among Locations. This assessment found significant variation among the four courts reviewed (Anchorage, Sitka, Bethel and Fairbanks) in the characteristics of the cases filed, and in case processing. Each court numbered case files, recorded information, structured hearings and made decisions differently, at times raising questions about sound case management practices and even equal treatment and due process.[18]

A number of factors contributed to the variations among locations. One of the most significant was the local legal culture. Local legal culture is the style that courts and attorneys within a community or region develop for handling legal matters. Typically, the First Judicial District emphasized cooperation in resolving cases. Sitka in particular had long-established and close ties among the Sitka Tribe and its social workers, the state social workers and the state courts for handling children's cases. Anchorage had developed more active case management practices, and some specialization for CINA cases (in part related to the larger number of judges and cases) that did not exist in other courts. Fairbanks and Bethel courts and judges also had individual styles.

2. Role of Judges. One of the few issues on which the assessment found little variation among communities concerned the proper role for judges in CINA cases. With a few exceptions, judges approached CINA cases the same way they approached other civil cases: as the passive arbiters of disputes brought to them by the parties. As one judge said, "the contestants develop the facts and the judge makes a decision." Judges also believed that they lacked authority to oversee DFYS decisions for the most part.

[18] The evaluation did not show the additional differences that probably exist in communities that the project did not review in detail.

In contrast, attorneys, guardians ad litem (GALs), social workers and others believed that federal law and the unique requirements of CINA cases mandated judges to take a more active role, both in case management and substantive matters.

3. Nature of CINA Proceedings. Court involvement in CINA cases was characterized by multiple, short hearings. Despite some local variation in patterns, statewide most (84%) hearings concluded in twenty minutes or less. The assessment found that most of the important decisions in CINA cases (with the exception of those made by the judge during relatively infrequent contested hearings) were negotiated by the parties outside of the courtroom, usually immediately prior to a scheduled hearing.

4. Parties and Participation. Numerous parties participated in the typical CINA case, including the judicial officer, the social worker, the state's assistant attorney general (who represented the Division of Family and Youth Services), one or both parents, the parents' attorneys, the guardian ad litem (appointed by the court to represent the child's interests), and sometimes the child's Indian tribe.

Telephonic participation in hearings was common, especially in rural areas, and especially for tribal representatives participating from villages. Although parties accepted telephonic participation, some found it technologically lacking, and others found that court scheduling of hearings often made telephonic participation a practical impossibility;

5. Total Time. The time that elapsed between opening and closing a case was difficult to measure, because so many Fairbanks and Bethel cases lacked documentation showing whether the case was open or closed. Of the cases that contained a closing document, the total time elapsed between the dates cases opened and closed was eighteen months or less for 85% of the closed cases included in this assessment.[19]

6. Adjudications. As discussed earlier, the majority of CINA cases did not reach adjudication or disposition. Cases involving Native children were adjudicated CINA at about twice the rate of cases involving non-Native children.[20]

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[19] This figure includes only cases that had closed; in Fairbanks and Bethel, a majority of the cases did not have closing dates and a length of time from open to closed could not be calculated.

[20] In Anchorage, 51% of cases involving the ICWA (Indian Child Welfare Act) had an adjudication, compared to 31% of other cases. In Sitka, 64% of ICWA cases had an adjudication compared to 34% of non-ICWA. In Fairbanks,

The report found that parties commonly deferred or diverted cases from adjudication as long as the parties were cooperating or "working the case plan." The parties thus tended to view adjudication as a threat or punishment for the parents rather than a tool to help the children. In contrast, the National Council of Juvenile and Family Court Judges stress the importance of early and accurate adjudicatory findings of neglect or abuse. Making the findings early in the case helps structure the case plan and keep the parties focused on the case goals.

This practice of deferring or diverting cases from adjudication often was associated with delays. Months often elapsed before a case progressed to adjudication, depending on the community. All but 17% of Sitka's adjudication orders were entered within the first six months of the case, but only 41% of the Anchorage adjudication orders were entered within that time. In Fairbanks, 58% of the adjudication orders were entered within six months, and in Bethel, the figure was 64%.

7. Delay. The assessment found that complaints about delay were common to each of the locations studied, with the possible exception of Sitka. Further, most interviewees agreed that delay tended to harm children's interests. Interviewees said that the main reasons for delay included attorneys' efforts to get information about their cases or to assist their clients, scheduling difficulties (both court calendaring problems and conflicts in attorneys' schedules), attempts to get parents in treatment or better situations (often so that the case could be resolved informally rather than going to adjudication), untimely notification of absent parents, and administrative delays (e.g., transfer between social workers).

Not all interviewees viewed delay as detrimental. Some believed that parents needed substantial amounts of time or long-term services to repair the family structure. This fundamental tension in CINA cases between the perceived rights of parents and the needs of children often made it more difficult for judges and parties to manage delay.

8. Court Facilities. The facilities available in each court for parties to meet and discuss cases were severely limited. Anchorage and Fairbanks interviewees said that the courts' hallways often were the only meeting place, and Bethel interviewees reported use of a coat closet for meetings.

53% of ICWA cases had adjudications, compared to 28% of non-ICWA. Disparities for all three locations were statistically significant.

9. Special Findings about Indian Children. Nearly half of the children's cases reviewed (213 of 473, or 45%) for this project involved children who were characterized as Alaska Native or American Indian, or as qualifying for the different standards set out in the Indian Child Welfare Act. About 98% of Bethel children were ICWA, as were about 31% of the children in Anchorage, Fairbanks and Sitka.

The assessment found that implementation of ICWA requirements varied by location and by the parties involved. Areas of concern for tribes included notice (particularly a problem if a hearing was continued), intervention, and placement of children in ICWA-compliant homes (likelihood of ICWA compliance varied with the point in the case and location in the state).

10. Findings about Other Agencies. Although the purpose of the study was to assess the court's role in CINA cases, it quickly became clear that the court must work in concert with other agencies to resolve these cases. Findings on other agencies were more tentative than those for the court, and other data that we did not collect might lead to other conclusions. The findings are presented to assist these agencies, and are not meant to be definitive. Other agencies' decisions and practices structured the court's caseload and the litigation process. Resources available to the other agencies also affected the court's actions. The study found that resources varied by location in the state. Workloads for assistant AGs in some areas, GALs, social workers, and parents' attorneys all affected the quality of case work and amount of delay in cases.

III. General Recommendations

Recommendation ES-1. The Legislature must provide adequate resources so that agencies in the child welfare system can fulfill their functions.

We found that Alaska's abused and neglected children suffered from lack of resources. The Judicial Council recognizes that the State of Alaska faces and will continue to face severe fiscal restraints due to declining oil revenues. Moreover, the Council certainly does not have the expertise to divide limited funding among many worthwhile projects.

Nevertheless, the interests of the State, families and particularly children are so closely intertwined with the workings of the child abuse and neglect system in Alaska that the Council is obligated to emphasize the critical need to adequately fund

the agencies necessary to the system's operation. By the same token, the agencies must become more efficient, must clearly present and justify funding needs to the legislature, and must adequately allocate funding and personnel to CINA cases.

Recommendation ES-2. Courts, and the child abuse and neglect system as a whole, must emphasize the children's best interests first and foremost.

While the foster care system pays lip service to the interests of children in Alaska, it must rethink its structure and priorities to ensure that the interests of children really do come first. CINA cases presented a very real potential for conflict among parents' rights, tribes' interests, institutional interests, and the child's best interests. Agencies, including the courts, DFYS, and the Attorney General's office, must attempt to the greatest extent possible to make sure the agencies' resource limitations do not assume more importance than the child's interests. Courts and other agencies must not lose sight of the rights of children when considering the rights of parents and others.

Courts, including the supreme court, at times focused narrowly on other parties' rights to the practical exclusion of the interests of the children. Courts should not ignore or minimize other parties' rights, but should analyze them in the context of the children's interests. Alaska law creates parental rights, and obliges DFYS to help parents, because of a societal belief that children generally fare better with their parents (if they can minimally care for the children) than in an often impersonal foster care system. Thus, parents' rights should be understood in the context of what is best for the children.

Recommendation ES-3. Judges must take a more active role to meet the needs of the children in the CINA system.

The children who are the subject of CINA cases are not well served by a narrow view of the judge's role as the passive arbiter of the parties' disputes. The resource limitations and competing interests endemic to CINA cases combine to create a climate tolerant of delay and often focused on the parent in need of aid instead of the child in need of aid. Of all the players in the system, judges are in a unique position to take a more active role to protect the interest of the involved children. While this requires changes in current practice, an expanded role is consistent with the role of judges

envisioned by federal law. The supreme court's CINA Rules Committee should discuss how best to implement this change.

> **Recommendation ES-4. The Alaska Court System and child welfare system as a whole must process CINA cases much more quickly to protect the interests of the children in the system.**

We have stated in the report that to the children involved in each case, each hearing is an emergency. But we found that cases often moved through the system slowly at best, with little incentive for finding solutions expeditiously. All agencies involved must focus on moving forward promptly in CINA cases. The courts in particular should establish time lines for CINA cases to ensure they are resolved as soon as possible.

In particular, the court and the other parties should consider whether to change the practice of delaying and deferring adjudicatory findings of abuse and neglect in light of the procedural and substantive impacts of this practice on the child's interests. Courts also could schedule adjudications expeditiously once a party has requested a hearing. The delays that occurred at this stage because of calendaring and scheduling problems, attorneys who were not prepared, and failure to notify absent or putative parents, could be resolved by active case management and new policies.

> **Recommendation ES-5. The Court System must adopt statewide standards to ensure that CINA cases are handled fairly and with a greater degree of consistency.**

We found an unnerving amount of inconsistency in the ways in which courts handled CINA cases. While reasons for variation certainly existed in some circumstances, the court system must review these inconsistencies and enforce some degree of consistent and rational case management. Changes in practices in individual courts to meet statewide standards will affect other agencies' practices. To maximize effectiveness, the court should work with other agencies to develop new procedures.

IV. Specific Recommendations

This section sets out many of the detailed recommendations that the Judicial Council made, based on its extensive findings. The main report provides the findings, as well as more discussion for each of the recommendations.

A. Judge's Role

1. Active Supervision. Judges should take a more active role in each CINA case. The court should structure its case assignments (especially in Anchorage) to assure continuity.

> **Recommendation ES-6. As a general rule, each judge should keep all cases before him or her from start to finish. At each hearing, the judge should address the parents directly.**

This recommendation, based on principles set out by the National Council of Juvenile and Family Court Judges, is designed to improve substantive and procedural aspects of CINA cases by encouraging each judge to take responsibility for the cases assigned.

> **Recommendation ES-7. Judges must ensure at the start of CINA cases that notice has been sent to all necessary parties including putative fathers and all possible tribes of an Indian child, that DFYS has a definite plan for the case, and that time lines are set for case progress, including due dates for discovery, adjudication and disposition. At the first ninety-day hearing, the judge should require evidence that the State has done this.**

This recommendation flows from the finding that failure to notify the correct people early in the process was a major cause of case delays and inadequate decision-making. The report concluded that courts could save time in the long run and the parties could improve their handling of cases by enforcing time lines, notice and planning early in the case.

2. Reasonable Efforts. The court should spend more time and effort to make reasonable efforts findings.

Recommendation ES-8. The court should seriously inquire at every hearing about the state's reasonable efforts and make a specific finding either that such efforts were made, that reasonable efforts were not made, or that it was an emergency and that reasonable efforts were not necessary under the circumstances. Judges should learn, to the extent possible, what resources are available in their communities so they can effectively make a reasonable efforts findings.

Federal law requires judges to make findings concerning DFYS' efforts at various points in the case to reunite the family and prevent the need for removal. Although judges typically made the findings required by law, they spent minimal time inquiring and discussing the issues with the parties.

B. Delay Reduction

Recommendation ES-9. The court system should develop comprehensive time standards for CINA cases and incorporate these time standards in the CINA Rules and in its computerized case management system. Judges should set timelines for each case as early in the case as possible. The date for the next hearing should be set at the conclusion of the current hearing. The court should ensure compliance, and evaluate the standards.

Recommendation ES-10. Court administration should consider devoting more judicial and administrative resources to CINA cases so parties have better access to judges' and masters' calendar time for CINA hearings.

Particularly in Anchorage and Fairbanks parties said that they often could not get CINA hearings on a judge's or master's calendar promptly. Although the court and the parties themselves could take a number of steps to improve the situation short of aliocating more resources (for example, the court could decrease the number of pre-adjudication ninety-day hearings by scheduling adjudication earlier, the court could assign CINA cases to all Anchorage superior court judges, and the attorneys could be more prepared), the court may need to devote more resources to CINA cases.

The following recommendations flow from the assessment's conclusion that more active case management by judges could reduce unwarranted delays.

> **Recommendation ES-11. The judge should allow enough time (at least fifteen minutes) for a thorough and meaningful treatment of issues at the temporary custody hearing.**[21]

Discussing issues in the case in more depth at the first hearing may substantially reduce the overall length of the case. Judges could use checklists and other guides to assure comprehensive consideration of all points.

> **Recommendation ES-12. If the state has filed a petition for adjudication, the judge should set the case for the adjudication trial no more than 90 days from the date of the temporary custody hearing. If the state has not filed a petition for adjudication by the time of the ninety-day review hearing, the judge should require the state to file a petition for adjudication or to dismiss the case within 30 days. If the state has filed a petition for adjudication but the case is not set for adjudication by the time of the first ninety-day review hearing, the judge should set the case for adjudication within 30 days.**

> **Recommendation ES-13. Judges should deny requests to continue adjudication hearings absent newly discovered evidence, unavoidable delays in notifying parties, and unforeseen personal emergencies.**

These recommendations respond to the assessment's conclusion that judges could reduce unwarranted delays and move cases along if they took a more active case management role. The recommendations are based on suggestions from the National Council of Juvenile and Family Court Judges.

> **Recommendation ES-14. If the judge does not hold the disposition hearing immediately after the adjudication, the judge should set the disposition hearing for no more than 30 days later. The court should**

[21] The National Resource Guidelines, written by the National Council of Juvenile and Family Court Judges, recommend 60 minutes.

ensure that all required reports are filed within a reasonable time before the disposition hearing.

Recommendation ES-15. Each court location should reassess its procedure for "tickling" files for annual review to ensure that annual review hearings are not skipped. The court should ensure that all required reports are filed within a reasonable time before the annual review. Courts that routinely do annual reviews only on paper should consider holding some annual review hearings at which parties can appear and discuss the case.

These recommendations respond to findings that delays at disposition and post-disposition sometimes were caused by late reports, and that annual reviews sometimes were not timely held.

The following recommendations are directed less at individual judges and more towards court administrators.

Recommendation ES-16. The court should institute a pilot project to examine whether trial times could be shortened and scheduling problems reduced by requiring parties to attend pretrial conferences to limit issues at contested hearings.

The National Resource Guidelines suggest that pretrial conferences can reduce scheduling problems by limiting issues at contested hearings.

Recommendation ES-17. Judges and the court system administrators should give special attention to termination trials when reassessing calendaring priorities.

Although termination of parental rights trials are rare, they are very important to the children (and parents) involved. The assessment found scheduling contested termination trials presented problems in some locations.

C. Consistency Among Courts

Recommendation ES-18. The Department of Law should work with the court system, GALs, DFYS and others to create and implement statewide standards governing whether and when to take a case to adjudication.

This recommendation flows from the report's findings about adjudications: that they are often delayed or deferred (and that this harms children's interests), and that Indian children are adjudicated CINA disproportionately compared to non-Indian children.

Recommendation ES-19. The court should make its procedures, forms, and hearing names consistent statewide to a much greater extent than is now the case.

Implementation of this and the following recommendation would help parties who appear in more than one court location by standardizing information in the case file. These recommendations also would help the court system track the status of CINA cases statewide.

Recommendation ES-20. All courts, particularly the Fairbanks and Bethel courts, should ensure that their completed CINA cases contain a dismissal or other standardized closing document, and that the document is filed within two weeks of case resolution.

Recommendation ES-21. The state should implement its statewide computerized case management system for CINA cases as quickly as possible. The new system should be able easily to find family information in related cases.

A system which could easily find family information in related cases would help judges make better decisions for the family involved in the CINA system.

D. Relationships Among Parties

Recommendation ES-22. The judges and parties should strive for a non-adversarial tone in CINA cases.

This recommendation is based on the approach recommended by the National Council of Juvenile and Family Court judges, and on interviews with players in the Alaska CINA system. A non-adversarial tone encourages the parties to work together and helps keep the focus on helping parents and children.

Recommendation ES-23. The judge in each community should initiate meetings with CINA system professionals to discuss issues and solve problems. The court system also should organize periodic statewide meetings.

This recommendation flows from the assessment's conclusion that the court must work in concert with other agencies to resolve CINA cases. No agency that handles CINA cases can make system-wide improvements without the cooperation of the other agencies. Also, problems will inevitably arise as time goes on, and a mechanism should exist for addressing them quickly.

Recommendation ES-24. The court should design and implement a mediation pilot project and evaluation to help resolve CINA cases.

Other jurisdictions have successfully used mediation as a process to encourage non-adversarial, cooperative decision-making in CINA cases. Mediation also has the potential benefit of involving the parents directly in decision-making, thus encouraging parental participation in the treatment plan. The National Council of Juvenile and Family Court Judges says that mediation can be a useful tool in CINA cases.

E. Judicial Training and Education

Because CINA cases are confidential, few court administrators or clerks understand them. Judges who handle them infrequently may not be completely familiar with all the federal and state requirements in these cases. Thus, training and education are important.

Recommendation ES-25. The court system should systematically train all judges, magistrates and clerks about CINA cases, both at the annual judicial and magistrate conferences and at special training sessions.

Recommendation ES-26. The court system should develop a CINA bench book for judges and magistrates, and a handbook for clerks and administrators.

F. Court Facilities

Recommendation ES-27. Courthouses should be designed to have areas other than hallways to discuss CINA cases. This applies to the Anchorage courthouse, the planned Fairbanks courthouse, and those in other communities. The meeting areas should have telephone access so that parties not in the area (particularly tribes) can participate.

Decision-making in CINA cases could be improved if the parties had access to a private meeting area with telephones where they could negotiate resolutions before scheduled hearings.

G. Other Agencies

Although the assessment's primary purpose was to evaluate the court's role in CINA cases, it also made findings and recommendations about other agencies. Because the project did not set out to study these agencies specifically, other information beyond the scope of the project may suggest different recommendations. These recommendations should not be considered outside the context of the findings in the report, and should be regarded as a foundation for further discussion.

Recommendation ES-28. All agencies (the court system, OPA, the PDA, the Department of Law and DFYS) should emphasize training their workers, and should train as much as possible in cooperation with other agencies. All agencies, but particularly DFYS, should pay particular attention to teaching the requirements and rationale of ICWA.

Joint training maximizes each agencies' training resources. It also facilitates interagency collaboration that is essential to effective management of CINA cases.

DFYS should continue to train social workers on the CINA court process and the requirements of the Indian Child Welfare Act. It should consider inviting judges and court personnel to work on designing and carrying out training, to assure that workers accurately perceive the court's needs. The dialogue with the court about training also should increase the chances for the court and DFYS to resolve mutual problems.

The Department of Law should emphasize training its AGs in cooperation with DFYS. Because the two agencies' actions complement each other, and at times overlap, they should consider designing some training programs that can give each agency's staff a clearer understanding of the work and needs of the other agency. Assuming that AGs continue to rely on social workers to draft legal documents, assistant AGs should train DFYS staff on how to draft petitions that comply with state law. Conversely, DFYS staff should train assistant AGs in the social work principles that underlie their work with families.

OPA should continue to offer training for GALs and CASAs. It should encourage GALs and CASAs from communities other than Anchorage to attend.

Recommendation ES-29. All agencies should assess the most cost effective ways of providing services, and then justify this level of funding to the legislature. Agencies should cooperate when making their budget requests to the legislature.

This assessment recommended ways for agencies to deliver services more efficiently. However, it also recognized that these agencies provide essential services for Alaska's children, and deserve the necessary funds to protect Alaska's children. By supporting each other in making budget requests, agencies can better justify their needs and more effectively communicate with the legislature.

Recommendation ES-30. The judge should appoint a GAL in every CINA case, and should permit non-attorney GALs to participate as fully as attorney GALs at all hearings.

The assessment found a few cases in which a GAL had not been appointed (although court rules require them to be appointed in every case). The assessment's

conclusion that GALs play a unique and important role in protecting children's interests led to the recommendation that non-attorney GALs be encouraged to participate fully (as envisioned by court rules).

> **Recommendation ES-31. Following its review of office and management policies, DFYS should request from the legislature adequate funds to fulfill its responsibilities to Alaska's children. The request should include adequate office support staff and computers so that social workers can focus on their caseloads.**

After DFYS has maximized office efficiency, it should justify to the legislature a funding request sufficient to at least minimally fulfill its duties. The assessment found lack of secretarial support and computer automation to be particular problems.

> **Recommendation ES-32. DFYS should continue its search for more foster homes, particularly more Alaska Native foster homes. The Division should consider recognizing a range of out-of-home placement options in addition to foster homes.**

DFYS should consider continuing recruitment of Native foster homes, and look for innovative ways to increase Native participation. DFYS should work with ethnic groups and community organizations to recruit foster parents.

Licensing standards, emergency placements, and relative placements all appeared to be closely intertwined. DFYS should review innovative programs and policies from other states to see if some could be adapted to Alaska. DFYS also should explore the possibility of using tribally licensed foster homes, and using more in-home support services to prevent removal of children.

> **Recommendation ES-33. The Department of Law should continue to review its allocation of resources among various offices in the state. It should review the resources it needs to effectively handle CINA cases and justify appropriate funding requests to the legislature.**

Although most professionals interviewed for this assessment, no matter what their job or location, felt overwhelmed, interviewees from other agencies saw delays caused by assistant AGs as an exceptional problem only in Anchorage and Bethel. This

finding suggested that the Department of Law should continue to assess whether changes might be needed more in some areas than others.

H. Statutory and Rules Revisions

This section lists some of the report's major recommendations that must be accomplished by amending state statutes or court rules.

> **Recommendation ES-34. The court, Office of Public Advocacy, and Public Defender Agency should consider requesting amendment of AS 47.10 to limit the rights of absent or uninvolved parents in CINA proceedings.**

The assessment found that case delays often were caused by absent or putative parents becoming involved late in the case. The court, OPA and the PDA should contact other jurisdictions, for example, New York State, which limit the rights of certain parents in CINA proceedings. This suggestion should *not* substitute for early and diligent relative searches. It is designed to reduce unnecessary delay and expense to the court system caused by absent or uninvolved parents who received early notice but who chose not to participate until later.

> **Recommendation ES-35. The court system should consider adopting a rule that encourages promptness.**

For example, the court might consider adding a new subsection to CINA Rule 1:

> (g) Avoiding Delay. These rules will be construed to minimize delay, because delay in Child in Need of Aid cases directly prejudices the welfare of the involved children.[22]

> **Recommendation ES-36. The court should consider developing statewide protocols, possibly included in a court rule, to facilitate telephone participation by tribes (and other parties).**

[22] This language is based on *The Children Act of 1989*, from England and Wales.

The assessment found that the only practical way for many tribes to participate in hearings and negotiations was by telephone. Courts must continue to work with tribes who need to participate telephonically to assure timely hearings and accurate information about how to contact the court.

Recommendation ES-37. The CINA rules on notice should be amended to specify that all parties receive notice of continued or postponed hearings.

The recommendation found that parties, particularly tribes, found participation in CINA cases difficult because they did not receive notice of hearings that had been continued.

Recommendation ES-38. The CINA Rules and state statutes should be amended to provide for the permanency planning hearing within eighteen months of the case's filing, as required by federal law.

This recommendation flows from the assessment's findings that judges until recently did not routinely hold permanency planning hearings as required by federal law, possibly because the court's CINA Rules do not mention the permanency planning hearing. A second problem involved an apparent conflict between AS §47.10.080(l) and 42 USC §675(f)(C) as to the timing of the permanency planning hearing. Alaska should follow the federal law's requirement that the hearing occur within eighteen months of the case's filing (in most instances, the case filing date will be close to the date that the child was removed from the home).

I. Indian Child Welfare Act

The report made special findings and recommendations concerning CINA cases that involved Indian children. Many observers had expressed concern about whether the state adequately addresses the needs of Alaska Native and Indian children and complies with the requirements of the Indian Child Welfare Act.

Recommendation ES-39. Courts should interpret expansively the notice and intervention requirements of ICWA and Alaska law in order to allow tribes to take part in finding solutions for Indian children.

The assessment established that Alaska's Native communities have the resources and commitment to search for constructive solutions in CINA cases. Notifying a child's tribe about a CINA proceeding and facilitating full tribal participation improves the chance of resolving a CINA cases positively. While the tribe will not always make a contribution, whether due to limited resources or other reasons, it often does.

Recommendation ES-40. Courts should allow tribes to participate informally in early stages of the proceedings, and should develop a consistent statewide rule setting out the requirements for intervention, including what documents are necessary to prove a child is a member of the tribe.

The informal participation which most courts allow tribes early in the process keeps cases moving forward and helps involve tribes in finding solutions. This informal participation probably should be recognized in the CINA rules. This recommendation addresses a second problem, found particularly in Fairbanks, regarding the documentation that tribes file with the court to show that a child is a member of the tribe. At least in the past, practices varied between AG offices, judges and courts. While the Council takes no position as to the exact requirements to be included in such a rule, it should be drafted recognizing tribes' rights to determine membership, and should facilitate participation of tribes.

Recommendation ES-41. Courts should allow non-attorney tribal representatives to take a full role in the proceedings as envisioned by CINA Rule 3(h).

The assessment found that by and large tribal representatives have ample opportunity to participate in CINA proceedings. However, some judges and participants may be unaware that CINA Rule 3(h) specifically allows a non-attorney representative for a tribe.

Recommendation ES-42. Courts should be mindful of language and cultural barriers to tribal participation and attempt to minimize these barriers.

Courts should reduce language and cultural barriers as much as possible. Judges can reduce barriers by making it clear that interpretation is available when needed. The court system can help by providing materials that explain court processes to tribes, parents and other partricipants.

Recommendation ES-43. Courts should review ICWA's placement preferences in every case (for each placement) and apply them unless good cause (the best interest of the child) indicate otherwise.

ICWA requires courts to give preferences for placements which emphasize Indian children's Indian heritage. Courts must require the state to comply with these preferences unless the best interests of the child require a good cause finding to vary the preferences.

Recommendation ES-44. The court system, DFYS and the Department of Law should undertake further study to determine whether disparate adjudication rates between Native and non-Native CINA cases remain after statewide uniform standards have been implemented.

An unexpected and unexplained finding concerned statistically significant disparities in the rates at which Native and non-Native children were adjudicated children in need of aid in at least three of the four locations studied. While the report hypothesized that designing and implementing statewide uniform standards on adjudication might end the disparity, the theory should be checked with further study.

V. Implementation of Recommendations

The same federal project that funded the assessment offers about $100,000 in federal funds and $30,000 in state matching funds (which can include time of existing staff spent on the project) each year for the following three years. The funds offer real opportunities to build upon the Council's assessment and make real differences for Alaska's children. But the implementation requires a substantial effort and commitment from the Alaska Court System and other involved agencies in order to succeed. The Council urges the Legislature, courts and others to make this commitment.

This section includes recommendations for implementation that focus on the first year of the remaining three years in the Court Improvement Project.

Recommendation ES-45. The court system must commit substantial time and effort to carry out years two through four of this project.

Despite the availability of federal funds, implementing improvements in the courts' handling of CINA cases will require substantial effort. Court administrators, judges and clerks will have to spend hundreds of hours reviewing data, deciding on an implementation plan and carrying out that plan. If the supreme court, as well as the participants, do not fully support these efforts, any improvements will be piecemeal and insubstantial at best. The Alaska Supreme Court should endorse the implementation effort, and a justice of that court should head the work.

Recommendation ES-46. The supreme court should create a special CINA Committee to review this assessment, recommend specific changes in court rules and policies, and oversee implementation of the changes.

The Council's preliminary findings show incredible variation in the ways courts handle cases, in the degree to which they comply with state and federal law, in the speed with which they handle cases, in their familiarity with the area of law and its procedures, and in their effectiveness. The Council has made recommendations on increasing efficiency and effectiveness, and on improving other aspects of the system. Now, a group of judges and court staff familiar with these cases must review the assessment, decide on specific corrective policies and rules, and supervise the implementation of changes. Without "court ownership" of the follow-up, we believe that the project will not lead to real and lasting improvements.

The committee should consist of several superior court judges, district court judges/masters, court administrators, and clerks, chaired by a supreme court justice. The committee should include representatives from the major agencies involved in CINA cases and should represent all areas of the state. Committee members must contribute substantial time and effort during years two through four of the project. (We estimate eight meetings in year two.)

Recommendation ES-47. The court system should use project funds to hire staff to focus on this project.

The CINA Committee and other committees discussed *infra* need staff support in order to succeed. Project staff also should assist in providing training and in writing training materials as described below. The support staff might consist of a permanent part-time position of about 30 hours per week, an independent contractor hired to provide staff support, or some combination of the two. Support could be provided by one

person or duties could be divided among several, including existing staff. The Council would be glad to discuss with the court system the possibility of the Council participating.

Recommendation ES-48. The court system should establish other specialized committees or subcommittees as necessary to carry out this project.

We envision other court committees and subcommittees to focus on specific aspects of the assessment and the CINA committees' policy directives. A clerks' committee might work to make filing procedures consistent. Another subcommittee should recommend changes in the court's case management system to effectively track CINA cases. Subcommittees to oversee judicial and magistrate training also would be necessary.

Recommendation ES-49. The court system should focus on the following products in year two of the project:

a. **begin to develop consistent and effective policies and court rules to expeditiously handle CINA cases as recommended in the assessment report;**

b. **train judges, magistrates, and clerks with statewide sessions supplemented by regional and local efforts;**

c. **develop a judge's manual for CINA cases including a benchbook, and a clerk's manual for CINA cases;**

d. **implement improvements (financed by project funds) to the trial court's computerized case management module for children's cases; and**

e. **develop a pilot project to mediate CINA cases.**

Actions that the court takes in years three and four depend on its choices of priorities for work in year two.

VI. Conclusion

These recommendations will not be easy to implement. Resources are scarce, both for the involved agencies and for the state as a whole. Judges are to a substantial degree uncomfortable with the increased role envisioned in this report and in federal and state law.

However, failure to make improvements in the foster care system will directly lead to increased neglect and abuse of Alaska's children--our most important resource. In addition to the impact on children and families, failure to address problems in the system will impact society as a whole. It cannot be surprising that some abused and neglected children later become delinquent children, and grow into adults who often abuse society through crime, as well as their own children. The cost and effort of improving Alaska's foster care system may be high, but it is not nearly so high as ignoring the problems.